

# **EXHIBIT 5**

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 SHERMAN DIVISION

4 THE STATE OF TEXAS, et

5 al.,

6 Plaintiffs,

Case No.

7 vs.

4:20-cv-00957-SDJ

8 GOOGLE LLC,

9 Defendant.

10 ~~~~~

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12 VIDEO DEPOSITION OF

13 NANCY MATHIOWETZ PhD

14 October 15, 2024

15 9:07 a.m. Central

16 1045 West Fulton Market, Suite 1200

17 Chicago, Illinois

18 Stenographically Reported By:

19 Deanna Amore - CRR, RPR, CSR - 084-003999

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1 data or studies on understanding of product labels  
2 in New York, Florida, or California or product  
3 purchasing patterns specific to New York, Florida,  
4 or California; right?

5 MS. YOUNG: Objection to form.

6 THE WITNESS: I would have cited them if such  
7 had existed, but, obviously with respect to the  
8 nature of One A Day products, I obviously at that  
9 point in time could not find anything that  
10 segmented those three states from the rest of the  
11 country.

12 BY MS. SESSIONS:

13 Q. And that -- and such data or information  
14 was not necessary for you to render your opinions  
15 in the Bayer case; right?

16 A. There was no a priori hypothesis that  
17 consumers in these three states differed from  
18 consumers in other states.

19 Q. And since there was no such a priori  
20 hypothesis, you didn't need to cite data sort of  
21 testing or exploring that hypothesis?

22 A. Well, that's a different premise.

23 Q. Well, that is my question now.

24 So you said -- so I asked you whether data  
25 or information on consumers in New York, Florida,

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1 differently by different people affect the validity  
2 of your survey results?

3 A. I think in this case -- right -- the key  
4 part of the question is the disclaimer here "Does  
5 not provide additional support for heart health,  
6 immunity, or physical energy." Those are the  
7 phrases that were at issue in this lawsuit, and so  
8 those are the key issues that you want respondents  
9 to understand.

10 Q. So is the answer to my question which is  
11 "Does the fact that the phrase 'otherwise healthy  
12 person' could be interpreted differently by  
13 different people affect the validity of your survey  
14 results," is the answer to that question, no, it  
15 does not affect the validity of your survey  
16 results?

17 MS. YOUNG: Objection. Form.

18 THE WITNESS: I do not believe it did.

19 BY MS. SESSIONS:

20 Q. Let's now go to "additional support." Is  
21 the term "additional support" vague and ambiguous?

22 A. Certainly, in the pilot test, we saw no  
23 evidence of respondents saying that they did not  
24 understand that term.

25 Q. Okay. So you tested that phrase

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1 interviews?

2 BY MS. SESSIONS:

3 Q. Sure.

4 A. So could you repeat your question?

5 Q. Sure. So I guess we'll go back and I'll  
6 first ask you: Did you specifically test whether  
7 survey respondents had the same definition of  
8 chronic condition as it's used in Question 4?

9 MS. YOUNG: Objection. Form.

10 THE WITNESS: I can't see -- I'd have to go  
11 back and listen to the cognitive interviews again.  
12 I don't see in the report that there's mention of  
13 interpretation of chronic conditions.

14 BY MS. SESSIONS:

15 Q. Okay. And then my next question was  
16 whether it would affect the validity -- right -- of  
17 your survey if respondents had differing  
18 definitions of chronic conditions when they were  
19 answering Question 4.

20 MS. YOUNG: Objection. Form.

21 THE WITNESS: You know, the question asks for  
22 information such as. So it's illustrative. The  
23 point is these are questions that have to do with  
24 health as opposed to questions that have to do with  
25 your age and employment. So it's a collection of

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1 very different kinds of information. I don't think  
2 if -- for some people, if they think of cancer  
3 versus some people think of heart conditions,  
4 that's not going to change the validity of this  
5 question.

6 BY MS. SESSIONS:

7 Q. Got it. Okay. Right.

8 Because -- and what you were really trying  
9 to get at with this question was what people's  
10 expectations were about the website sort of given  
11 the collection of this type of information. Is  
12 that fair?

13 A. Well, it's really their expectation with  
14 respect to the presence of third-party software.

15 Q. Right.

16 And so to get information about a  
17 respondent's expectations with respect to the  
18 presence of third-party software, it is not  
19 particularly important that each respondent have  
20 the same precise definition of chronic condition?

21 MS. YOUNG: Objection. Form.

22 THE WITNESS: So if you listen to the cognitive  
23 interviews, it's clear that people understand this  
24 question to be saying this website is going to be  
25 asking you about all kinds of health information,

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1 Q. Okay. And that's one document produced by  
2 Google; is that right?

3 A. That's correct.

4 Q. So other than this single document  
5 produced by Google, you are not relying on any  
6 other materials produced either by Google, the  
7 plaintiffs, or any third parties in this case; is  
8 that right?

9 MS. YOUNG: Objection. Form.

10 THE WITNESS: There are no other Bates-stamped  
11 documents, no.

12 BY MS. SESSIONS:

13 Q. Okay. So you are relying, for instance,  
14 on expert reports?

15 A. As I've listed here, yes.

16 Q. Right. Okay.

17 So other than expert reports and this  
18 single Bates-stamped document produced by Google,  
19 are you relying on any other materials produced by  
20 Google, the plaintiffs, or third parties in this  
21 case?

22 A. Well, I think we already discussed this  
23 morning that I did also review Professor Chandler's  
24 rebuttal report and Professor Gans' rebuttal  
25 report.

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1 Q. Okay. Did you discuss the composition of  
2 the AdPRO's panel with any advertising or marketing  
3 professionals?

4 A. No. But I clearly, from the one Google  
5 document that you saw that I cited to, clearly  
6 Google themselves have raised questions about the  
7 composition of that panel.

8 Q. Did you -- okay, but other than -- well,  
9 strike that. I'll just ask you that question  
10 later.

11 Did you discuss with any advertising or  
12 marketing professionals their use of advertiser  
13 perception surveys in the conduct of their  
14 business?

15 A. I did not.

16 Q. Did you do any data collection of your own  
17 in this case?

18 And by "of your own," I mean other than  
19 reviewing the data provided by Professor Simonson.

20 A. I did not take an independent, separate  
21 data analysis. I didn't undertake a new survey or  
22 other data.

23 Q. Right.

24 Not only did you -- you didn't undertake a  
25 new survey. You also didn't undertake any



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1 interviews or any data gathering kind of short of a  
2 survey; correct?

3 A. That's correct. But we certainly did  
4 analysis of Professor Simonson's survey data.

5 Q. Right. Understood.

6 Okay. Let's go now to your report. Let's  
7 look at paragraph 9. So beginning at paragraph 9  
8 is a section of your report that summarizes your  
9 critiques of Professor Simonson's work; is that  
10 right?

11 A. That's correct.

12 Q. Okay. So the first critique that you list  
13 here is sampling and methodological flaws?

14 MS. YOUNG: Objection. Form.

15 THE WITNESS: So this is a high-level summary.  
16 Of course, the full report goes into the detail  
17 that leads to that summary opinion.

18 BY MS. SESSIONS:

19 Q. All right. And so, then, in the second  
20 bullet, you write "Professor Simonson's samples  
21 among his three surveys are not representative of  
22 the underlying population"; right?

23 That's one of your critiques of  
24 Professor Simonson's work?

25 A. That's correct.

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1       they exited out, whether it was because they heard  
2       it was for litigation. They are, like, "I don't  
3       want to be party to this" or because they heard it  
4       was for Google, and they may or not -- may or may  
5       not perceive that their answers would be viewed  
6       favorably or unfavorably by Google. Who knows. We  
7       don't know what their motivation is.

8       BY MS. SESSIONS:

9           Q.     So you said -- you said that you've never  
10       seen, in a litigation context, an expert disclose  
11       the survey and -- the purpose of the survey and  
12       offer the opportunity to opt out at the end of the  
13       survey; is that right?

14          A.     So as I've already alluded to, best  
15       practices are to keep interviewers and respondents  
16       blind to the client and that it is for litigation  
17       purposes.

18          Q.     So you would agree that the respondents  
19       were blind to the client and the purposes of the  
20       survey until the end of the survey; right?

21          A.     They were.

22          Q.     Okay. So when they were giving their  
23       substantive answers, they were blind to the client  
24       and the purpose of the survey; right?

25          A.     That's correct.

**ERRATA SHEET FOR THE TRANSCRIPT OF NANCY MATHIOWETZ**Case Name: *THE STATE OF TEXAS, et al. vs. GOOGLE LLC*, 4:20-cv-00957-SDJ

Dep. Date: October 15, 2024

Deponent: N, Mathiowetz

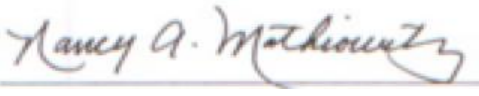
Page	Line	Original Language	Corrections	Reason for Correction
16	15	"...that there was xinterest in the development of new..."	"...that there was <u>an</u> interest in the development of new products..."	Transcription error
21	25	"So the demand side is—serve the..."	"So the demand side <u>platform</u> serves the..."	Transcription error
22	10	"So Google Ad DV360..."	"So Google Ad <u>DV</u> 360..."	Transcription error
24	19	"...or is this just at what happened at trial?"	"...or is this just what happened at trial?"	Transcription error
29	12	"...Navarro, McCall and check Photography versus..."	"Navarro, McCall, and <u>Navarro</u> Photography versus..."	Transcription error
33	14-15	"...Joint Sports claimants do do an establishment survey,..."	"...Joint Sports claimants do an establishment survey,..."	Transcription error
39	23	"It looks similar to."	"It looks similar to <u>it</u> ."	Transcription error
81	7	"..cost validated..."	"...cross validated..."	Transcription error
83	8	"systems follow..."	"systems file..."	Transcription error
123	21	"instances."	"questions."	Transcription error
147	20	"I did <u>not</u> take an independent..."	"I did <u>undertake</u> an independent..."	Transcription error
151	5	"one produced."	"no one produced."	Transcription error
155	16-16	"So with respect to the ambiguous language, but certainly there are other..."	"So <u>not</u> with respect to the ambiguous language, but certainly there are other..."	Transcription error
169	21-22	"...the for example,..."	"...for example,..."	Transcription error

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220	10-12	"...among the 500 entities, was his company one of the companies..."	"...among the 500 entities, was <u>this</u> company one of the companies..."	Transcription error
233	23-24	"...Adtech and publishers..."	"...Adtech publishers"	Transcription error
246	23-24	"who is just taking..."	"who has just taken..."	Transcription error
247	19	"advertisers was"	"advertisers were"	Grammar; Transcription error
286	8	"...apply. Whether you're doing..."	"...apply whether you're doing..."	Transcription error

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons, therefore.

Date: October 28, 2024

Signature: 

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**ATTORNEY ERRATA SHEET FOR THE TRANSCRIPT OF ITAMAR SIMONSON**

Case Name: State of Texas et al., v. Google LLC

Dep. Date: October 15, 2024

Deponent: Nancy Mathiowetz

Page	Line	Corrections	Reason for Correction
17	23	of the litigation work → of <b>your</b> litigation work	Transcription error
24	20-21	I'll, first of all, just ask → <b>First, I'll</b> just ask	Transcription error
30	12	that Navarro case → <b>the</b> Navarro case	Transcription error
36	1	You were critiquing → You <b>weren't</b> critiquing	Transcription error
83	17	So you – right – believe → So – <b>right – you</b> believe	Transcription error
144	11-12	is that correct? → is that <b>right</b> ?	Transcription error
217	22	and 6 of the largest global → and <b>the 6</b> largest global	Transcription error
238	2	Exhibit 6 → Exhibit <b>7</b>	Referred to incorrect exhibit
238	8	Exhibit 6 → Exhibit <b>7</b>	Referred to incorrect exhibit
267	14	missing the question → <b>misreading</b> the question	Transcription error

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons therefore.

Date: 11/15/24

Signature: /s/ Justina Sessions

Justina Sessions